

REMARKS

Claims 6, 12-15 and 18 have been cancelled. Claims 4 and 17 have been amended to recite the wort-free aqueous solution as comprising liquid adjunct. This amendment has a basis in original claim 6. Proper antecedent basis has been provided for the "maximum oxygen uptake rate" in claim 16. The term "conventional" has been deleted from claim 17. The dependency of claim 19 has been amended in view of the cancellation of claim 18.

35 USC §112

Claims 14-17 were rejected under 35 USC §112, second paragraph. The rejection of claims 14 and 15 has been overcome by cancellation of these claims. Proper antecedent basis has been provided for the "maximum oxygen uptake rate" in claim 16 to overcome the rejection. The term "conventional" has been deleted from claim 17 to overcome the rejection.

35 USC §103(a)

Claims 4-7 and 12-20 were rejected under 35 USC §103(a) as being unpatentable over U.S. Patent No. 4,329,433 to Seebeck *et al.* ("Seebeck") in view of U.S. Patent No. 6,265,000 to Shimamura *et al.* ("Shimamura") and in further view of Applicants' specification.

In Seebeck, there is disclosed a continuous fermentation method for solutions such as grape juice. The yeast is first aerobically cultured in a nutrient solution and when the yeast reaches a certain concentration level, a fermentation media is continuously added to the cultured yeast for continuous fermentation. Throughout the Seebeck patent, the nutrient solution is described as preferably being a fruit juice and

the fermentation media is described as preferably being a fruit juice. In particular, the Examples of Seebeck use fruit juices as the nutrient solution and the fermented solution. The Office Action notes that Seebeck "does not necessarily and positively recite adding the fruit juice/yeast mixture to a wort".

The Office Action then states that Shimamura teaches the production of a beer like product where the yeast can be cultured in a wine must (the "yeast-containing output" of Shimamura). At column 4, lines 21-24 of Shimamura, the output is defined as "a material(s) or an intermediate product(s) which are used or produced for or during processes for producing an alcoholic beverage other than beer." (Underlining added.) Therefore, while Shimamura teaches adding a fermented yeast/juice mixture to a wort, the above passage from Shimamura teaches away from adding to wort a fermented mixture including yeast and a material used for the production of beer.

Amended independent claims 4 and 17 recite that the yeast is suspended in a wort-free aqueous solution comprising liquid adjunct. Liquid adjunct is commonly used in producing beer. See, for example, column 3, lines 14-15 of attached U.S. Patent No. 4,666,718. Given that Shimamura teaches away from adding to wort a fermented mixture including yeast and a material used for the production of beer (i.e., liquid adjunct in amended claims 4 and 17), any permissible combination of Shimamura and Seebeck would be limited to teaching the addition to wort of a fermented mixture including yeast and a material used for the production of a beverage other than beer.

In contrast, amended independent claims 4 and 17 recite the addition to wort of a fermented mixture including yeast and a material commonly used for the production of beer. Accordingly, it is respectfully submitted that amended claim 4 (and claims 5, 7

and 16 that depend thereon) and amended claim 17 (and claims 19-20 that depend thereon) are patentable over the cited references.

Conclusion

It is believed that the entire application has been placed in condition for allowance. Favorable reconsideration is respectfully requested. No other fees are believed to be needed for this amendment. However, if other fees are needed, please charge them to deposit account 17-0055.

Respectfully submitted,

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